

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Chris Olmsted	Team: Squad #9	CCRB Case #: 202003969	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/30/2020 9:18 PM	Location of Incident: East Houston Street and Bowery	Precinct:	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Sat, 06/06/2020 9:54 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 06/06/2020 9:54 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Robert Wong	02490	948442	HQ SEC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Brendan Sullivan	26410	955547	SRG 1
2. POM Errol Murphy	24047	953161	SRG 1
3. POM Patrick Plunkett	03208	937297	SRG 1
4. POM Steven Chimienti	00155	939999	SRG 4
5. SGT Jose Aquino	00264	933618	SRG 4
6. POM Ravi Moonan	12917	926429	SRG 4
7. LT Richard Mack	00000	916095	SRG 4
8. POM Thomas Stech	16049	940765	SRG 4
9. POM Cristian Hernandez	03152	961813	SRG 4
10. POM David Cardona	16573	960324	SRG 4
11. POM Kerry White	18586	942697	SRG 4
12. POM Hector Torres	01787	937643	SRG 4
13. POM Thomas Pecorella	09542	947959	DIS CTL
14. POM Craig Martinez	02429	937915	DIS CTL
15. POM Erik Green	27395	936697	DIS CTL
16. POM Justin Barberi	25008	957356	SRG 5
17. POM Beau Fesmire	31913	954806	DIS CTL
18. SGT Matthew Tocco	02725	940805	DIS CTL
19. POM Benjamin Bello	21783	952456	DIS CTL
20. POM Miguel Gutierrez	07436	926918	DIS CTL

Officer(s)	Allegation	Investigator Recommendation
A.SGT Robert Wong	Force: Sergeant Robert Wong used pepper spray against an individual.	

Officer(s)	Allegation	Investigator Recommendation
B.SGT Robert Wong	Force: Sergeant Robert Wong used pepper spray against individuals.	

### Case Summary

On June 6, 2020, § 87(2)(b) filed this complaint with the CCRB via the online form on behalf of herself, her husband § 87(2)(b) and unidentified individuals. § 87(2)(b) and § 87(2)(b) provided statements regarding the allegations involving unidentified individuals but declined to participate with the investigation into the allegations regarding themselves.

On May 30, 2020, at approximately 9:18 p.m., during a protest on Bowery between East Houston Street and 1<sup>st</sup> Street in Manhattan, Sergeant Robert Wong of Headquarters Security used OC spray against § 87(2)(b) and against a group of individuals (**Allegation A: Force – Pepper Spray; § 87(2)(g)**) (**Allegation B: Force – Pepper Spray; § 87(2)(g)**)

No arrests were made nor summonses issued as a result of this incident.

On July 2, 2020, NYPD Legal provided a body-worn camera video from PO Errol Murphy of SRG 1 related to this incident. (Board Review 01) On March 26, 2021, NYPD Legal provided body-worn camera videos from Sergeant Wong and from PO Justin Barberi of SRG 5 related to this incident. (Board Review 02)(Board Review 03) All of the videos have internal timestamps in Zulu time (represented by a 'Z' at the end of the in-video timestamp) which on May 31, 2020 was four hours ahead of NYC time.

### Findings and Recommendations

**Allegation (A) Force: Sergeant Robert Wong used pepper spray against § 87(2)(b)**

**Allegation (B) Force: Sergeant Robert Wong used pepper spray against individuals.**

It is undisputed that between 9:00 p.m. and 10:00 p.m. on May 30, 2020, on Bowery between East Houston Street and 1<sup>st</sup> Street in Manhattan, NYPD officers attempted to disperse groups of protestors. At approximately 9:18 p.m., on the west side of Bowery, officers with bicycles were in a line formation facing a line of protestors when a struggle ensued between officers on the west side of their line and nearby protestors.

BWC footage from PO Barberi shows at 3:35 at least one individual struggling with an officer over control of a bicycle. It is not clear to whom the bicycle belongs. This struggle happens on the far-left side of the frame of PO Barberi's camera. On the far-right side of the frame is § 87(2)(b) in a white shirt holding a sign. This individual is approximately 10 to 15 feet from where the struggle over the bicycle is happening and is apparently uninvolved. The uninvolved individual is at least 5 feet from the nearest police officer and is not taking any actions. At 3:39, two to three individuals are visible on the left side of the frame, including the individual who was struggling with the officer at 3:35. No individual appears to still be struggling with an officer. Their hands are up, palms open, and visible.

Beginning at 3:40, the individual with the sign is visible with their hands up on the right side of the frame. Sergeant Wong enters the frame and sprays an approximately two-second burst of OC spray at the individual with the sign. He then turns to the group of individuals including the person who was struggling with the officer at 3:35. Beginning at 3:42 Sergeant Wong sprays a two to three second burst of OC spray at the group of individuals, who disperse. (Board Review 03)

Three frames from PO Barberi's BWC clarify the footage. (Board Review 04) In the first, timestamped at T01:18:39Z, the individual in question is visible on the right side of the frame in a white tank top, dark pants, a white mask, and holding a cardboard sign. In the second, timestamped at T01:18:41Z, in the bottom righthand corner, the individual appears to be holding the sign in front of her face. An NYPD officer in a reflective vest stands opposite her, and a blue object with a black bottom is between them. The third frame, timestamped T01:18:42Z, shows the officer and blue object more clearly. The officer has chevrons on his uniform sleeve, and the object is a cylinder apparently spraying a liquid.

After watching PO Barberi's BWC, Sergeant Wong identified himself as this officer and stated the object was his OC spray. Sergeant Wong stated to the CCRB that during the incident a secure perimeter of officers had been set up to protect officers affecting an ongoing arrest. A group

of three to four individuals were pushing officers and their bicycles in what appeared to be attempts to break through the perimeter. Sergeant Wong dispersed OC spray on that group of individuals as seen in the BWC. Sergeant Wong had no independent recollection of the individual with the sign and stated that the video did not refresh his recollection of the individual, his use of OC spray against the individual, or the individual's actions prior to the use of OC spray. Sergeant Wong stated he received special training in the use of OC spray from SRG 2 in approximately 2019. (Board Review 05)

Sergeant Wong's training history as listed by the NYPD in their NYPD Online database includes four SRG trainings in 2019. (Board Review 06)

Sergeant Wong's BWC (Board Review 02) captures between 00:40 and 00:50 Sergeant Wong preparing his OC spray and moving toward the individual with the sign. Relevant frames from his footage are timestamped T 01:18:39Z and T01:18:40Z (Board Review 07). His camera was not in a position to capture whether he used OC spray against that individual.

PO Murphy's BWC (Board Review 01) shows between 3:20 and 3:22 that the individual with the sign was directly sprayed with liquid from a blue cylinder with a black bottom. Frames capturing this incident are timestamped between T01:18:41Z and T01:18:42Z. (Board Review 08)

Patrol Guide Procedure 221-07 states, "O.C. pepper spray may be used to gain or maintain control of persons who are actively resisting arrest or lawful custody or exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of the service, or other persons." It defines "active aggression" as, "[the] threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent."

Patrol Guide Procure 221-07 also states, "O.C. pepper spray shall not be used in situations that do not require the use of physical force." It further states, "Do not use O.C. pepper spray on subjects who passively resist (i.e., minimal physical action to prevent a member from performing their lawful duty)." [emphasis Patrol Guide] It defines "passive resistance" as, "Minimal physical action to prevent a member from performing their lawful duty. For example, a subject failing to comply with a lawful command and stands [sic] motionless and/or a subject going limp when being taken into custody." (Board Review 09)

PO Murphy's BWC footage shows OC spray being directed at the individual with the sign who was not part of the group of protestors struggling against officers. PO Barberi's BWC footage from the same second shows an NYPD officer standing opposite the individual and a can of OC spray between them. Sergeant Wong's BWC shows Sergeant Wong preparing his OC spray before the moment the individual was sprayed and Sergeant Wong moving toward the individual. Sergeant Wong viewed PO Barberi's BWC footage, identified himself as the subject officer, and identified the object in his hand as OC spray. Therefore, the investigation has determined that Sergeant Wong used OC spray on the lone individual with the sign.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party. (Board Review 10)
- Sergeant Wong has been a member of service for 11 years and has been a subject in two other CCRB complaints and two other allegations, none of which was substantiated.

§ 87(2)(g)

### Mediation, Civil and Criminal Histories

- This case was not eligible for mediation.
- As of June 1, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to this complaint. (Board Review 11)
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City. (Board Review 12)

Squad No.: 09

Investigator:	<u>Christopher Olmsted</u>	<u>Investigator Chris Olmsted</u>	<u>July 20, 2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Monique West</u>	<u>IM Monique West</u>	<u>                    </u>
	Signature	Print Title & Name	Date

Reviewer:	<u>                                    </u>	<u>                                    </u>	<u>                                    </u>
	Signature	Print Title & Name	Date